



12 JUL 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

#3

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Nixon & Vanderhye
901 North Glebe Road
Arlington, VA 22203

In re Application of :
JACOTOT et al. :
Application No.: 10/533,642 :
PCT No.: PCT/EP03/12056 :
Int. Filing Date: 02 October 2003 : DECISION ON PETITION
Priority Date: 02 October 2002 :
Attorney Docket No.: 1721-90 :
For: METHOD FOR MODULATORS OF
MITOCHONDRIAL FUNCTIONING
AND NEW MODULATORS OBTAINED

This decision is issued in response to applicant's "Rule 137(b) Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally" filed 03 May 2005, which is being treated as a Petition to Revive under 37 CFR 1.137(b). Applicant has paid the large entity petition fee.

BACKGROUND

On 02 October 2003, applicants filed international application PCT/EP03/12056 which claimed a priority date of 02 October 2002. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 02 April 2005.

On 03 May 2005, applicants filed a transmittal letter for entry into the national stage in the United States for international application PCT/EP03/12056, which included, among other materials: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a preliminary amendment; and a petition to revive international application no. PCT/FR03/12056

On 22 August 2005, applicants filed a declaration executing application number PCT/FR03/12056.

DISCUSSION

37 CFR 1.137(b) permits the filing of a petition to revive an abandoned application where the abandonment resulted from an unintentional delay. A grantable petition under this section must include: (1) the required reply, unless previously filed; (2) the petition fee required by law; (3) a statement that the "entire delay in filing the required reply from the

due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional;" and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c). As discussed below, applicant here has failed to satisfy items (1) and (3).

As to Item (1) above, the "required reply" here is: a request for entry into the U.S. national stage for the specified international application; the payment of the basic national fee; and a petition to revive under 37 CFR 1.137. The present petition includes a Form PTO-1390 transmittal letter requesting entry into the U.S. national stage for international application number PCT/EP2003/012056, and it included payment of the basic national fee. However, the petition to revive identified the international application as PCT/FR2003/012056. Because of the inconsistency between the international application numbers, it is not clear whether the present submission is requesting entry into the U.S. national stage for PCT/EP2003/012056 or PCT/FR2003/012056. Applicant must provide a corrected petition that makes clear the application for which national stage entry is desired.

Item (3) has not been satisfied. Petitioner states that "the above-identified application became abandoned as to the United States because the fees and documents were inadvertently not filed prior to the expiration of the time set forth in 37 CFR 1.495(b)." The caption of the petition to revive lists the international application number as PCT/FR2003/012056. Hence, it appears that petitioner is attempting to revive PCT/FR2003/012056, not PCT/EP2003/012056. Due to the disparity, the request for revival (and the statement of unintentional delay contained therein) cannot be accepted. A corrected petition form is required that makes clear the application that petitioner is seeking to revive and the application to which the statement of unintentional delay is directed.

It is noted that the declaration is identifies the international application as PCT/FR2003/012056.

CONCLUSION

The petition for revival under 37 CFR 1.137(b) is DISMISSED without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should be entitled "Renewed Petition Under 37 CFR 1.137(b)" and include the materials required to satisfy items (1) and (3) of a grantable petition discussed above, that is, a corrected transmittal letter and petition form which clearly identify the international application for which revival and national stage entry is desired and the application to which the statement of unintentional delay is directed. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box

1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Anthony Smith
Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Telephone: (571) 272-3298
Facsimile: (571) 273-0459